

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MATTHEW T. MACLEAN,

Plaintiff,

vs.

JAMES ANDERSON,

Defendant.

No. C 12-4288 PJH (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

This is a civil rights case filed pro se by a prisoner at the Solano County Jail. The complaint was filed in the United States District Court for the Eastern District of California, which transferred it here. Plaintiff is granted leave to proceed in forma pauperis in a contemporaneous order.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1), (2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the

1 grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations
2 omitted). Although in order to state a claim a complaint "does not need detailed factual
3 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
4 requires more than labels and conclusions, and a formulaic recitation of the elements of a
5 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
6 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
7 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
8 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
9 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
10 framework of a complaint, they must be supported by factual allegations. When there are
11 well-pleaded factual allegations, a court should assume their veracity and then determine
12 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,
13 679 (2009). Complaints in pro se prisoner cases, such as this one, must be liberally
14 construed in favor of the plaintiff when applying the *Twombly/Iqbal* pleading standard.
15 *Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010).

16 **B. Legal Claims**

17 Plaintiff rented a room in Napa, California, from defendant. His family moved his
18 property out of the room after plaintiff was arrested. Defendant refused to return the
19 damage deposit or refund part of the rent for the portion of the month plaintiff was no longer
20 using the room.

21 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
22 elements: (1) that a right secured by the Constitution or laws of the United States was
23 violated, and (2) that the alleged deprivation was committed by a person acting under the
24 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). Here, plaintiff does not allege
25 any facts that even suggest that a right under the Constitution or laws of the United States
26 was violated, nor does he allege any facts that suggest that defendant, evidently a private
27 individual, was acting under color of state law. The complaint will be dismissed with leave
28 to amend to allege facts going to these points.

CONCLUSION

1. For the foregoing reasons, the complaint is **DISMISSED** with leave to amend, as indicated above, within twenty-eight days from the date of this order. The amended complaint must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to amend within the designated time will result in the dismissal of these claims.

2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: August 31, 2012.



PHYLLIS J. HAMILTON
United States District Judge